



DEPARTMENT OF LAW  
OFFICE OF THE  
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ATTORNEY GENERAL

Bob Kennedy  
State Tax Commission of Arizona  
1645 West Jefferson  
Phoenix, Arizona 85007

July 20, 1978  
**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Re: 78-149 (R76-477)

Dear Mr. Kennedy:

You have asked several questions regarding emergency expenditures of special districts--in particular, volunteer fire and water delivery districts--and the related State Tax Commission duties.

Counties and municipalities devise budgets using monies in a general fund collected as revenues. A.R.S. §§ 9-240.18, 9-244, 11-251.12, 42-302. The special districts, in contrast, only assess and collect revenues in the form of taxes and fees from the users of the special service provided. Monies placed in volunteer fire district and water delivery district funds can be used only for those special purposes and may not be commingled with other county funds. Each special district must follow the budgetary and fiscal procedures provided by the statutes authorizing the district organization. Thus, emergency expenditures which would result in budget deficits must be statutorily authorized.

With volunteer fire districts, the district board and county board of supervisors annually determine a budget pursuant to A.R.S. § 9-1005. The tax is levied only against that property situated within the geographical limits of the district. A.R.S. § 9-1005.D provides that the county treasurer shall keep the money received from such taxes in a separate fund.

Limitations on expenditures of volunteer fire districts are provided in A.R.S. § 9-1004.C, which provides:

The district shall not incur any debt or liability in excess of the money actually available and unencumbered at the time in the fund, except as provided in § 9-1005. (Emphasis added.)

The last clause provides express statutory authori-

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zation for fire districts to exceed their budgets under the procedure of A.R.S. § 9-1005.

In the case of water delivery districts, statutory authorization for exceeding their budgets is implicit in A.R.S. § 45-1953.A. Under this section, deficits (as well as any surplus) from preceding years must be taken into account when establishing current budgets. To have achieved a prior deficit, spending in excess of the budget obviously had to have occurred.

Having established that volunteer fire and water delivery districts may exceed their budgets, we next consider the procedures for lawfully exceeding budgets. A.R.S. § 9-1005 establishes that procedure for volunteer fire district budgets in Subsection "C", which provides that the district levy:

. . . shall be made and the taxes collected in the manner, at the time and by the officers provided by law for the collection of state and county taxes.

Water delivery districts are similarly provided for. A.R.S. § 45-1953.B states taxes shall be assessed, levied and collected: " . . . in the same manner as county taxes."

The procedures governing emergency expenditures are established by A.R.S. § 42-308. Where an emergency occurs, the results of which were not anticipated in the budget, the governing board of any "county, city or town" may petition the State Tax Commission for authorization to exceed its budget. Article 13, Section 7 of the Arizona Constitution establishes special districts as political subdivisions of the State, and vests them with the rights, privileges and benefits granted municipalities.<sup>1</sup> Thus,

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1. However, A.R.S. § 45-1902 directs that irrigation water delivery systems shall not be considered municipal corporations. This statute, passed in 1933 (§ 8, Ch. 101, Laws 1933) predates Article 13, Section 7 of the Constitution, (eff. Nov. 27, 1940) and may be unconstitutional. In the absence of judicial interpretation, the constitutionality will be presumed. Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973); McKinley v. Reilly, 96 Ariz. 176, 393 P.2d 268 (1964), appeal dismissed 381 U.S. 276 (1965). If constitutional, A.R.S. § 45-1902 may provide legislative recognition that the proprietary functions of irrigation water delivery districts may not enjoy the sovereign immunities of municipalities. However, in respect

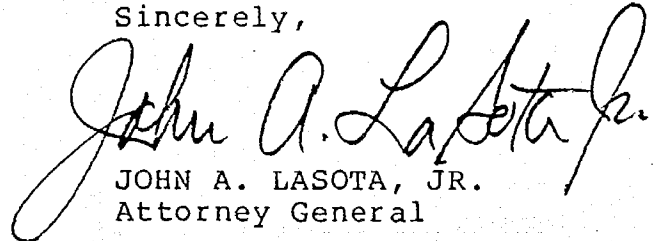
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while they are not a "county, city, or town", the Constitution appears to grant such special districts the privilege of appearing before the State Tax Commission as if they were municipalities. That the provision "county, city, or town" must be construed as including volunteer fire and water delivery districts is further shown by the consequences of failing to consider them as such. Having statutory authority to exceed their budgets, it would be incongruous to allow quasi-municipalities of limited powers the power of exceeding their budgets without petitioning the State, while at the same time requiring counties, cities and towns so to petition the State Tax Commission. Thus, volunteer fire and water delivery districts may exceed their budgets only upon the authorization of the State Tax Commission.

You further questioned whether the maximum tax levy of twenty mills on each dollar as per A.R.S. § 9-1005 applied to the fiscal year 1976-1977. Since this question is no longer topical, we need not consider it.

Sincerely,



JOHN A. LASOTA, JR.  
Attorney General

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(footnote 1 continued)  
to the taxing power, the highest attribute of sovereignty, the districts are municipal in character. Maricopa County Municipal Water Conservation District No. 1 v. LaPrade, 45 Ariz. 61, 40 P.2d 94 (1935).